NOTICE: In lieu of a star print, erratta are printed to indicate corrections to the original report.

Calendar No. 149

115TH CONGRESS, *1st Session* | SENATE | REPORT 115–112

ERRATA

JUNE 15, 2017.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 304]

CORRECTION

On page 4, immediately preceding the "CHANGES IN EXISTING LAW (CORDON RULE)" heading, insert the following minority views:

MINORITY VIEWS OF SENATOR UDALL

At a legislative hearing on a previous version of S. 304, Santee Sioux Tribal Chairman Roger Trudell testified on the financial burden that copayment costs impose on Indian veterans who are referred to the VA by IHS.[1] Chairman Trudell went on to testify that Indian veterans living on the Santee Sioux Reservation—many of whom are living at or below the federal poverty line—often delay seeking care at VA medical facilities because they cannot afford to pay for the cost of VA co-payments in addition to travel and lodging

[1] *Legislative Hearing on S. 2417 and S. 2842 Before the S. Comm. on Indian Affairs,* 114 Cong. 11–15 (2016) (statement of Hon. Roger Trudell, Chairman, Santee Sioux Nation).

expenses that trips to distant VA medical centers.[2] He stated, "I can assure you that these co-pays can, and often do, represent the difference between being able to pay or not pay the heat bill for an Indian veteran living on my Reservation."[3]

Based on this testimony and similar stories reported informally to the Committee by Indian veterans, it is evident that legislation is needed to alleviate the financial burden imposed by VA copayments on Indian veterans. Congress should seek more ways to expand access to health care for Indian veterans and all American Indians and Alaska Natives. However, careful review of S. 304 demonstrates that the bill fails to accomplish these goals.

FAILURE OF S. 304 TO FULLY ADDRESS UNDUE FINANCIAL BURDENS OF VA COPAYMENTS ON INDIAN VETERANS

S. 304 would amend Section 222 of IHCIA to add an exception to the IHS-referred patient financial liability waiver contained in that section.[4] This amendment would allow VA to charge a copayment to IHS-referred patients and, then, transfer the liability for this copayment to the IHS. S. 304 would therefore remove any existing liability protections that exist for IHS-referred Indian veterans. The Senate should oppose this bill and any legislation that would exclude Indian veterans from financial liability protections afforded by Congress. The bill would also increase the financial liability of the IHS for referral services provided by the VA, resulting in additional strain on the IHS referral system and reduced availability of care for all American Indians and Alaska Natives. Given the existing underfunding of the IHS generally, and its referral program specifically, the Senate should also oppose the bill and any legislation that would extraneously increase the Service's financial liability.

As currently constructed, S. 304 would only authorize the IHS to cover VA copayments of Indian veterans who first receive an IHS-referral.[5] S. 304 therefore fails to fully address the concerns outlined by Chairman Trudell and other Indian veterans. The Senate should put aside consideration of S. 304 and instead explore legislative options to address the financial burden imposed by *all* VA copayments on Indian veterans, regardless of IHS-referral status. Precedent for such legislation can be found in Section 5006 of the American Recovery and Reinvestment Act of 2009,[6] which exempts Indians from copayments under the Medicaid and Children's Health Insurance Programs.

ADDITIONAL CONCERNS REGARDING ENFORCEMENT OF EXISTING INDIAN VETERAN FINANCIAL LIABILITY PROTECTIONS FOR HEALTH CARE SERVICES

As noted by the Chairman,[7] Section 222 of the IHCIA currently precludes health care providers that receive payment for a medical service authorized via an approved IHS referral from assessing an additional cost or financial liability on IHS patients for that same

[2] *Id.* at 13–14.
[3] *Id.* at 14.
[4] S. 304, 115th Cong. § 2 (2017).
[5] S. 304, 115th Cong. § 3 (2017).
[6] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, § 5006, 123 Stat. 115, 505–511 (2009).
[7] S. Rep. No. 115–112, at 2 (2017).

service." The Committee Report states that the Executive Branch communicated [8] to the Committee that this existing Section 222 liability-waiver should bar VA from charging IHS-referred patients a copayment. Given this information, the Senate should seek additional clarification outlining the Executive Branch's implementation of Section 222's patient liability waiver for Indian veterans before taking any legislative action amending the IHS patient liability-waiver provision—including passage of S. 304.

Furthermore, pursuant to subsection (b) of Section 222 of IHCIA,[9] the Secretary of Health and Human Services (HHS) is legally responsible for notifying IHS referral service providers—including the VA—of their statutory requirement to waive financial liability for all IHS-referred patients. These notices must be issued within five days of receipt of notification of a copayment claim. The Senate should conduct further oversight of this matter to determine HHS compliance with this requirement; the scope of any communications between HHS and VA on exemption of IHS-referred veterans from copayments; and if IHS-referred Indian veterans were illegally billed copayments by VA.

[8] S. Rep. No. 115–112, at 4 (2017).
[9] 25 U.S.C. § 1621u(b).